



SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
May 5, 2004
6:00 PM
APPROVED MINUTES

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Jennifer Goralski, Board Member
Carol Perica, Board Member
Ernest Jones, Board Member
Howard Myers, Board Member

ABSENT: Neal Waldman, Board Member

STAFF: Donna Bronski
Kurt Jones
Al Ward
Keith Neiderer

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above. Chair Vail noted that Neal Waldman had contacted the Board and advised that he would be unable to attend the Study Session and hoped to be in time for the regular meeting.

APPROVAL OF MINUTES

1. April 7, 2004

Chair Vail noted a correction on Page 7, second Paragraph: ...if he wanted to appeal the decision with the Maricopa County Superior Court, not Supreme. Commissioner Myers noted a correction on Page 4, ninth Paragraph: Commissioner Myers wanted to know whether the home was built as a spec home or purchased home, not the variance. **Commissioner Perica moved to approve the minutes as amended. Vice Chair Kuhstoss seconded the motion. The minutes were approved by a vote of six (6) to zero (0).**

REGULAR AGENDA

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment, as well as public hearing procedures. He pointed out that, as one of the Commissioners was absent, he would be amenable to a request for a continuance from either of the two applicants if they so desired.

2. **6-BA-2004 (Amoroso Residence)** request by Pietro and Pietra Amoroso, applicant/owner, for a variance from Article V. Section 5.104.G regarding wall height on a parcel located at 8020 E Happy Valley Road with Single Family Residential, Environmentally Sensitive Lands (R1-43 ESL) zoning.

MR. NEIDERER presented the case per the staff packet. He reviewed the four criteria and also showed photos of the existing wrought iron and entry gate. Mr. Neiderer noted staff had received three e-mails in opposition and one e-mail in support, and no phone calls.

MR. NEIDERER responded to Board questions.

MR. LUIGI AMOROSO, applicant, addressed the Board. He stated that the wall had been built before the home, with no intent of wrongdoing. The wall was built with full knowledge of the 3' standard. After consulting with Pinnacle Engineering, the Amorosos were told that after redoing the water flow, the wall could be constructed without the landfill. The landfill would have been costly, and everything but the gate was already in place. This was not an afterthought...something built after the home. He concluded that if this had been the case, it would have been done properly at that point.

CHAIR VAIL asked Mr. Amoroso if he had given any thought to what could be done to come into compliance without spoiling the appearance of the property.

MR. AMOROSO stated that modifications at this point would be difficult and costly. He commented that he could raise the inside landscaping in hopes to be in compliance.

COMMISSIONER MYERS wanted to know why Mr. Amoroso elected to build a wall before the structure was laid out. He asked the applicant if he was the contractor or if he had contracted someone else to build. Mr. Myers explained why he would have elected to build before the structure had been laid out.

MR. AMOROSO stated that he was the general contractor. He said that they wanted the wall built to keep people out. He reiterated there was no intent of wrongdoing, that the landfill costs involved were great, and that he had received Pinnacle's approval.

(There was no public comment.)

CHAIR VAIL asked staff if the e-mails that were received had cited any specific reasons for opposition or support for the proposal.

MR. NEIDERER replied that the opposition was due to the fact that all properties were required to meet code and that this application should also. However, there was nothing specific mentioned.

(Chair Vail closed public testimony.)

BOARD MEMBER JONES asked of staff if the fill around the house could still be changed, and if so, could it be done now.

MR. NEIDERER stated that if the home were constructed to approved plans, there would be additional fill on the inside of the front wall. He assumed it could be done now.

VICE CHAIR KUHSTOSS commented that this does not meet the criteria to receive a variance. She further noted that the applicant was aware of the 3' fence limitation and still proceeded with his plans after consulting with others. Vice Chair Kuhstoss then went on to say that the applicant should have known to come back and ask further questions before construction. She would be voting against allowing the variance.

CHAIR VAIL inquired of staff about the present and future status of the gate.

MR. NEIDERER replied that the gate could not meet the requirements either way.

COMMISSIONER PERICA asked Ms. Bronski if they could look upon the variance request as two variance requests.

MS. BRONSKI stated that that was correct. They could grant a variance on a portion and not the whole request. She further noted that if the wall could be brought into compliance, they could deny the variance on everything and still have to deal with the gate.

COMMISSIONER GORALSKI agreed that the request does not meet the criteria to grant a variance. She noted that she is disturbed that the gate would still be in noncompliance, even with the addition of fill. Therefore, she would be unable to support the variance request as well.

BOARD MEMBER MYERS said he couldn't find that the applicant met any of the criteria, with the possible exception of Criteria #4. He further stated that applicant did know the conditions. Commissioner Myers commented that filling was the wrong alternative. He also expressed concern that the wall was built without grating the property, because it now takes away options for compliance. He would not be supporting the variance.

CHAIR VAIL struggled as to finding all four criteria having been met. He could find Criteria #4 as being met. Chair Vail reiterated that the Board is constricted by State law, which requires all four criteria to be met. He would be voting against. Chair Vail further commented he would like to see what the applicant could do either with fill or landscaping, and perhaps an architect could take another look at the gate. Again Chair Vail stated he could not support the appeal.

BOARD MEMBER JONES stated he would oppose approval of the variance.

CHAIR VAIL advised the applicant that he could offer the opportunity for a continuance; however, he was not just one vote shy. He explained to the applicant that if he did not wish for a continuance and wished to work with the City on doing a fill or an appeal, he could go about doing that.

Vice Chair Kuhstoss moved to deny the requested variance. Commissioner Myers seconded the motion. The motion passed by a vote of six (6) to zero (0).

CHAIR VAIL explained to the applicant the appeal procedures at this point.

3. **7-BA-2004 (Casa Buena – Lot 38)** request for a variance from Article V. Section 5.304E & F regarding side yard setback requirements on the east and west and the distance between main buildings on adjacent lots, on a 10,500 +/- Sf. parcel located at 7550

E Turquoise Avenue with Single Family Residential, Planned Residential District, (R1-18 PRD) zoning.

MR. WARD presented the case per the staff packet. He indicated that staff had received letters of support from four neighbors and one phone call from a neighbor not in support.

MR. WARD responded to Board questions.

MR. PALECEK, the applicant, addressed the Board. He stated Criteria #3 and #4 had been met, and emphasized Criteria #1 and #2. The applicant explained that the builder had changed the original lot size width from 120' to 90' but did not change the side yard setback. He further noted that the neighbor to the west had been granted a 4' easement by the original owner onto said property, thus, creating another special circumstance. At this point the applicant addressed the staff's options.

MR. PALECEK responded to the following Board questions:

COMMISSIONER GORALSKI inquired as to what year the home had been purchased, and if they had plans already at that point to expand. The applicant replied that the home had been purchased in October of 2002, and they had no plans to expand at that point.

COMMISSIONER PERICA asked the applicant if he had been aware of the 4' easement on the west side of his property when the house was purchased. He responded that he did know. However, he was not saying that that was what was causing the undue hardship. The concession had been made; it was important to accommodate the neighbor. Commissioner Perica further asked how the easement would be affected if the variance was granted. Mr. Palecek informed Board Member Perica that the neighbor has signed and agreed that there is no problem with the build, and that they would build 4' to the easement.

BOARD MEMBER MYERS inquired of staff about the 4' easement. He wanted to know if the measurements that were given with the variance were taken from original property line or with the easement considered. Mr. Ward informed Commissioner Myers it was from the original property line.

MR. PALECEK addressed Criteria #2 by summing up his needs to enjoy the same enjoyment as his neighbors. He reiterated the builder's lack of anticipation for future build because of the restricted side yard setback. He further noted he was keeping an aggregate width between the neighbors. The east side was not a problem; it's in conformance. The west side is at 19' and is not in violation of any fire codes.

(Chair Vail opened public testimony.)

MR. ROGER CREHAN, 7541 E Turquoise, stated he is the neighbor directly across the street from Applicant Palecek. He said that the applicant's home is the smallest of the six models offered, ranging from 1600 to 2300. He believes that when the house is completed it will increase the applicant's home value, which in turn will help his and the entire neighborhood. Mr. Crehan also believes the applicant deserves a 3-car garage, and he sees nothing wrong in making these changes.

MR. RILEY MC QUADE, 7550 E Turquoise, expressed he is the neighbor directly to the east side of applicant's property. He stated that he has absolutely no objection to the plans. He feels it will look nice and add value to the neighborhood.

(Chair Vail closed public testimony.)

MR. PALECEK addressed the one objection from the neighbor behind and to the west of his property. The said neighbor indicated rejection of an additional separate structure to his home. It had been denied. The applicant does not feel this would be an equal comparison.

VICE CHAIR KUHSTOSS was not opposed to the idea of the situation, but does not see any special circumstances. The Board is not allowed to grant a variance when the applicant creates the situation. Vice Chair Kuhstoss will be voting against the granting of the variance, but not because it is not a good idea.

CHAIR VAIL expressed that the neighborhood is lovely and beautifully maintained. He further noted that the addition of a third car garage would put the home out of character with the rest of the neighborhood. Chair Vail stated he did not have a problem with the 19' distance between the homes, instead of the 20' distance. He believes all four criteria have been met; therefore, he would support the appeal.

BOARD MEMBER GORALSKI stated that she sympathized with the discussion of the 9' rooms issue; she's lived it. Commissioner Goralski said she supported the views of Vice Chair Kuhstoss as well. She does empathize with the applicant and the home in the neighborhood, but should consider the 9' rooms. She noted it would be tight but do-able, and would be in compliance. Based on the four criteria, she cannot support the request.

COMMISSIONER MYERS expressed he is bothered that the house is a lot different than the others, but that is how it was purchased. He commented that it is a beautiful neighborhood and that part of that character is the space between the houses. He further noted that the applicant does have options and would like to see those pursued as opposed to this variance request. Board Member Myers

would not be supporting the variance, although he does empathize with the situation.

COMMISSIONER PERICA finds the four criteria to be gray matter in this case. She stated that she would not vote based on the fact that someone else in the neighborhood had previously done the same thing. She noted however that she had looked strongly at the Casa Buena II criteria, and would be voting with Chairman Vail to approve the variance.

BOARD MEMBER JONES reviewed the home sites and home sizes shown on Attachment 11. He finds that the request meets specifications and fits the general scheme. For these reasons he would vote for the variance.

CHAIR VAIL explained to the applicant that it was 3 – 3 and the seventh Board Member was not in attendance. He reiterated that if the applicant asked, he could grant him one continuance before calling for a motion.

MR. PALECEK accepted the opportunity for a continuance.

CHAIR VAIL stated that he would honor the request for a continuance at the June meeting.

Vice Chair Kuhstoss moved to continue this matter to the next scheduled meeting. Commissioner Jones seconded the motion. The motion passed by a vote of six (6) to zero (0).

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:15 PM.

Respectfully submitted,

“For the Record” Court Reporters